

HONORABLE RONALD B. LEIGHTON

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

EDWARD JAMES WILKINS,  
Petitioner,

v.

JEFFREY A UTTECHT,  
Respondent.

CASE NO. C19-6122RBL  
ORDER

THIS MATTER is before the Court on Magistrate Judge Creatura’s Report and Recommendation [Dkt. # 16], recommending denial of Petitioner §2254 habeas petition, and dismissal with prejudice. Petitioner has not objected, but he has filed a “Motion for Vicarious Exhaustion of State Remedies” [Dkt. # 17]. Wilkins argues (as have several petitioners recently) that in *Fischer v. State of Washington*, Cause No. 20-cv-0051TSZ, Judge Zilly rejected a portion of a Magistrate Judge’s R & R that denied a habeas petition on exhaustion grounds, because Fischer *had* exhausted his remedies, even though on his petition’s cover sheet he “checked a box” stating that he had not. *See* Dkt. # 5 in that case. Wilkins seems to suggest that this

1 particularized ruling means that state court exhaustion is no longer a requirement of a § 2254  
2 petition. As the state argues, he is wrong. [Dkt. # 18].

3 (1) The Report and Recommendation is **ADOPTED**;

4 (2) Petitioner Wilkins' §2254 habeas petition is **DISMISSED** with prejudice;

5 (3) Wilkins' motion for summary judgment [Dkt. # 15] is **DENIED**;

6 (4) Wilkins' Motion for Vicarious Exhaustion of State Remedies is **DENIED**;

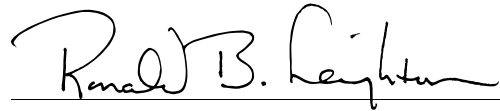
7 (3) For the reasons articulated in the R&R, the Court will **NOT** issue a Certificate of  
8 Appealability; and

9 (4) Petitioner's *in forma pauperis* status is **REVOKED** in the event of an appeal.

10 The clerk shall send copies of this Order to Wilkins, to Respondent's counsel, and to  
11 Magistrate Judge Creatura.

12 IT IS SO ORDERED.

13 Dated this 23rd day of April, 2020.

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15 Ronald B. Leighton  
16 United States District Judge  
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